



Report of Meeting

Independent Hearing and Assessment Panel

Tuesday, 17 July 2018

6:00pm

Council Chambers

4-20 Eton Street, Sutherland

SUTHERLANDSHIRE

PANEL: Jason Perica (Chair), Mary-Lynne Taylor, Jan Murrell and David Russell

Staff in attendance were the Manager, Development Assessment and Certification (Simone Plummer) and Manager, Major Development Assessment (Mark Adamson).

DISCLOSURES OF INTEREST

File Number: 2015/14239

Apologies

There were no apologies.

IHAP043-18	Proposal:	INSTALLATION OF A BUSHFIRE DANGER RATING SIGN
	Property:	LOT 1 DP 1167886, (NO. 130) OLD ILLAWARRA ROAD, BARDEN RIDGE
	Applicant:	NSW RURAL FIRE SERVICE - SUTHERLAND DISTRICT / SUTHERLAND SHIRE COUNCIL
	File Number:	DA18/0560

No-one spoke for or against the proposal.

PANEL DECISION:

THAT:

Pursuant to the provisions of Section 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, Development Application No. 18/0560 for installation of a bushfire danger rating sign at 130 Old Illawarra Road, Barden Ridge be approved subject to the Conditions within the Council staff report to the Panel meeting of 17 July 2018.

REASON FOR THE DECISION:

The Panel agreed with the assessment of environmental considerations outlined within the Council staff report. The public, social and safety benefits of the proposed sign outweigh any issues and concerns regarding visual impact, which are considered minor and acceptable in any event. In terms of consideration of submissions and community views, it was noted one submission was received. The Panel agreed with the Council staff consideration of this submission.

VOTES

The decision was unanimous.

ASSESSMENT OFFICER'S RECOMMENDATION

THAT:

1. Pursuant to the provisions of Section 4.16 of the Environmental Planning and Assessment Act, 1979, and in accordance with the delegated authority issued by the General Manager of Sutherland Shire Council, Development Application No. 18/0560 for Installation of a bushfire danger rating sign at Lot 1 DP 1167886 (No. 130) Old Illawarra Road, Barden Ridge is determined by the granting of development consent subject to the conditions contained in **Appendix "A"**.

IHAP044-18	Proposal:	ALTERATIONS AND ADDITIONS TO EXISTING DWELLING
	Property:	LOT 262 DP 845463 (NO. 17) GLASSOP STREET, CARINGBAH
	Applicant:	ROSSMARK PTY LTD
	File Number:	DA18/0417

Speaking for the proposal was Peter Hamilton.

PANEL DECISION:

THAT:

Pursuant to the provisions of Section 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, Development Application No. 18/0417 for alterations and additions to existing dwelling at 17 Glassop Street, Caringbah be approved subject to the Conditions within the Council staff report to the Panel meeting of 17 July 2018.

REASON FOR THE DECISION:

The Panel agreed with the assessment of environmental considerations outlined within the Council staff report.

The Panel had regard to the applicant's Clause 4.6 variation request regarding the minimum landscaped area standard within Clause 6.14 of Sutherland Shire LEP 2015. Given the proposal did not reduce landscaped area (the non-compliance is existing and is not being made worse), and did not alter the building footprint, the Panel was satisfied regarding the landscaped area. The Panel formed the view the proposal and the applicant's written request satisfactorily addressed required matters within Clause 4.6 of the LEP and it was considered compliance with the landscaped area standard was unnecessary and unreasonable in this case.

While some DCP setback non-compliances exist, the site characteristics and the setting of the site were such that the non-compliances were acceptable.

In terms of consideration of submissions and community views, it was noted no submissions were received.

VOTES

The decision was unanimous.

ASSESSMENT OFFICER'S RECOMMENDATION

THAT:

1. Pursuant to the provisions of Clause 4.6 of Sutherland Shire Local Environmental Plan 2015, the written submission in relation to the variation to the landscape development standard satisfies the relevant provisions of Clause 4.6 and is therefore supported. It is recommended that the provisions of Clause 4.6 be invoked and that the landscape development standard be varied to 23.0% in respect to this application.

2. That Development Application No. 18/0417 for Alterations and Additions to existing dwelling at Lot 262 DP 845463 17 Glassop Street, Caringbah be approved, subject to the conditions contained in **Appendix "A"** of the report.

IHAP045-18	Proposal:	ALTERATIONS AND ADDITIONS TO A DWELLING
	Property:	Lot 3 DP 238879 (NO. 6) CRANBROOK PLACE, ILLAWONG
	Applicant:	PLANNING APPROVALS
	File Number:	DA18/0215

Speaking for the proposal was Eileen Moy.

PANEL DECISION:

THAT:

Pursuant to the provisions of Section 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, Development Application No. 18/0215 for alterations and additions to a dwelling at 6 Cranbrook Place, Illawong be approved subject to the Conditions within the Council staff report to the Panel meeting of 17 July 2018, subject to the deletion of Condition 2 and deletion of Note 2 to Condition 1.

REASON FOR THE DECISION:

The Panel generally agreed with the assessment of environmental considerations outlined within the Council staff report. The one exception related to the consideration of privacy impacts and the need and reasonableness of recommended Condition 2. The Panel noted the relatively significant setback from the rear boundary (approximately 6.5m), existing landscaping, separation between dwellings, the proposed use as a dwelling and the use of rooms behind Windows 07 and 10 (being a stairwell and bedroom) and formed the view the privacy impacts were acceptable and did not warrant the recommended condition.

In terms of existing covenants, the Panel noted advice from Council staff that Clause 1.9A of Sutherland LEP 2015 suspends any private covenants applying to the land. This meant the recommended Note 2 to Condition 1 was unnecessary.

The Panel had regard to the applicant's Clause 4.6 variation request regarding the minimum landscaped area standard within Clause 6.14 of Sutherland Shire LEP 2015. Given the non-compliance was pre-existing and the proposal did not reduce landscaped area nor alter the building footprint, the Panel was satisfied regarding the landscaped area. The Panel formed the view the proposal and the applicant's written request satisfactorily addressed required matters within Clause 4.6 of the LEP, and it was considered compliance with the landscaped area standard was unnecessary and unreasonable in this case.

While some DCP setback non-compliances exist, the site characteristics and the setting of the site were such that the non-compliances were acceptable.

In terms of consideration of submissions and community views, it was noted one submission was received regarding privacy impacts. As previously outlined, the Panel did not agree the proposal resulted in unacceptable privacy impacts.

VOTES

The decision was unanimous.

ASSESSMENT OFFICER'S RECOMMENDATION

THAT:

1. That Development Application No. 18/0215 for alterations and additions to a dwelling at Lot 3 DP238879 (No. 6) Cranbrook Place, Illawong be approved, subject to the conditions in **Appendix "A"** of the report.
2. Pursuant to the provisions of Clause 4.6 of Sutherland Shire Local Environmental Plan 2015, the written submission in relation to the variation to the landscape ratio satisfies the relevant provisions of Clause 4.6 and is therefore supported. It is recommended that the provisions of Clause 4.6 be invoked and that the landscape area development standard be varied to 19% in respect to this application.

IHAP046-18	Proposal:	DEMOLITION OF EXISTING DWELLING AND TWO PLUNGE POOLS AND CONSTRUCTION OF A NEW DWELLING AND LANDSCAPING WORKS
	Property:	72-74 KANGAROO POINT ROAD, KANGAROO POINT
	Applicant:	JOHN COCHRANE
	File Number:	DA18/0287

Speaking for the proposal was John Cochrane.

PANEL DECISION:

THAT:

Pursuant to the provisions of Section 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, Development Application No. 18/0287 for demolition of existing dwelling and two plunge pools and construction of a new dwelling with landscaping works at 72-74 Kangaroo Point Road, Kangaroo Point be approved subject to the Conditions within the Council staff report to the Panel meeting of 17 July 2018, subject to the following amendments:

- a) A new Condition to state:

NORFOLK ISLAND PINE TREE PROTECTION AND CARE

The large Norfolk Island Pine adjoining the foreshore must have a qualified arborist (Level 5) to assess the tree and recommend tree management measures for the longevity and health of the tree during construction and subsequently, with the recommended measures being carried out. This assessment is to be in writing and provided to the Council's Manager of Development Assessment and the Certifying Authority prior to the issue of a Construction Certificate.

- b) A new Condition to state:

CONSERVATION MANAGEMENT DOCUMENT

Prior to the issuing of any Occupation Certificate (including an Interim Occupation Certificate), a conservation management plan, or similar conservation management document, shall be prepared and approved by the Council (in writing) by the Director, Shire Planning. The document is to prioritise works required for the maintenance and conservation of the heritage item(s) on the site.

- c) A new Condition to state:

DILAPIDATION REPORTS

a) Dilapidation Report – Heritage Item(s)

Prior to any works commencing on the site (including demolition) and prior to issuing a Construction Certificate, a dilapidation report for the heritage item(s) on the site must be prepared by a suitably qualified person with heritage experience and submitted to Council's Director, Shire Planning.

b) Post Dilapidation Report

Prior to issuing any Occupation Certificate, including an interim OC, a post-dilapidation report must be submitted to the Director, Shire Planning. This is to be accompanied by the conservation management document referred to in Condition 1B, with any required remedial maintenance works to be outlined and carried out.

REASON FOR THE DECISION (AND ADDITIONAL CONDITIONS):

The majority of the Panel generally agreed with the assessment of environmental considerations outlined within the Council staff report (see voting below). Subsequent references to views of “the Panel” in this section refer to the majority view of the Panel.

The Panel received advice during the meeting (in deliberations) from Council staff about the provisions and required considerations within Clause 13 of the *State Environmental Planning Policy (Coastal Management) 2018*, which are not inconsistent with Clause 5.5 of the Sutherland Shire LEP 2015, addressed in the Council staff report. The Panel formed the view the proposal was acceptable against the provisions of the SEPP.

The Panel gave careful consideration to proposed variations to the Landscaped Area and Foreshore Building Line, and to heritage considerations, given the site contains a heritage item(s).

In terms of the Landscaped Area, the Panel had regard to the applicant's Clause 4.6 variation request regarding the minimum landscaped area standard within Clause 6.14 of Sutherland Shire LEP 2015. Given the non-compliance was pre-existing and the proposal significantly increased the provision of landscaping (by almost double), the non-compliance was not significant in overall percentage terms, the proposed siting and scale was appropriate for the site in its context (with a scale below that permitted by the FSR standard), the heritage item on the site and associated structures limited landscaping, and the provision of additional planting on the cabana roof (not technically landscaped area), the Panel was satisfied with the proposed landscaping. The Panel formed the view the proposal and the applicant's written request satisfactorily addressed required matters within Clause 4.6 of the LEP, and it was considered compliance with the landscaped area standard was unnecessary and unreasonable in this case.

In terms of the Foreshore Building Line, the Panel had regard to the applicant's Clause 4.6 variation request regarding the Foreshore Building Line (FBL) standard within Clause 6.9 of Sutherland Shire LEP 2015. Given that Clause 6.9 of the LEP allows for the footprint of existing buildings to be matched upon redevelopment, the additional proposed footprint beyond the existing footprint was minor, the setting of adjoining development was such that the setback and building line to the foreshore was consistent, and the site planning was appropriate, the Panel was satisfied with the proposed contravention of the FBL. The Panel formed the view the proposal and the applicant's written request satisfactorily addressed required matters within Clause 4.6 of the LEP, and it was considered compliance with the FBL was unnecessary and unreasonable in this case.

The Panel notes that the site includes a heritage item(s), Substantial redevelopment is proposed, being demolition of an existing dwelling and construction of a new dwelling, including landscape works also proposed to the roof of the Cabana, which (arguably) forms part for the heritage item when considering the Statement of Significance and associated description as published on the State Heritage Register. Clause 5.10 of Sutherland Shire LEP 2015 also allows the consent authority to require a Conservation Management Plan in certain circumstances. From visual inspection, it was apparent the heritage item(s) on the site have not been well maintained. All these factors combined such that the Panel formed the view it was reasonable, related to the development and for a planning purpose, for an appropriate conservation management document to be prepared for the site. The applicant was verbally agreeable to this at the Panel meeting, although expressed concerns with timing (requesting any such requirement be prior to an Occupation Certificate). A new condition is therefore imposed, as outlined in the Decision, with a related condition addressing dilapidation of the heritage item(s). Similarly, the large Norfolk Island Pine (part of the heritage item) also warrants protection and appropriate care and maintenance, due to its significance.

In terms of consideration of submissions and community views, it was noted there were no submissions regarding the proposal.

VOTES

The decision was not unanimous, but 3-1 in favour. Mary-Lynne Taylor disagreed with the Panel's decision for the following reasons:

Mary-Lynne Taylor would approve the application but would not support a condition for a Conservation Management Plan as the application has been assessed such that a CMP was not warranted in these circumstances as no works are proposed to the identified heritage items. She would support a condition requiring any works to the heritage items to be the subject of a separate development application supported by an appropriate heritage impact statement and management document prepared by a suitably qualified heritage consultant, with the works to be sequenced by

the qualified heritage advisor.

Mary-Lynne Taylor would support the cl 4.6 variation request for the foreshore building line breach but would not support the variation of the landscaped area standard as she does not find the cl 4.6 variation request to be well founded as it does not explain how such a breach is an appropriate environmental outcome and as the site has the capacity to provide a complying landscaped area. She would require a condition that the development of this site must comply with landscaped area as per the LEP (ie 40%).

ASSESSMENT OFFICER'S RECOMMENDATION

THAT:

1. Pursuant to the provisions of Clause 4.6 of Sutherland Shire Local Environmental Plan 2015, the written submissions in relation to the requested variations itemised below satisfy the relevant provisions of Clause 4.6 and are therefore supported. It is recommended that the provisions of Clause 4.6 be invoked and these development standards be varied as detailed below, in respect to this application.

Development Standards	Clause	Requirement	Proposal	% Variation
Landscaped Area	6.14	40% of the site	35%	12%
Limited Development on Foreshore Area	6.9	Foreshore Development limited to requirements under Cl.6.9	New Dwelling forward of FBL	Non-numerical

2. That Development Application No.18/0287 for demolition of an existing dwelling and two plunge pools and construction of a new dwelling with landscaping works at Lot D DP 26408 72-74 Kangaroo Point Road, Kangaroo Point be approved, subject to the conditions contained in **Appendix "A"** of the report.

IHAP047-18	Proposal:	ALTERATIONS, ADDITIONS, FIT OUT AND USE OF A COMMERCIAL PREMISES AS A PUB
	Property:	LOT 1 DP 212353, (NO.34) RAILWAY CRESCENT, JANNALI
	Applicant:	WHITE AND PARTNERS (SYDNEY INVESTMENTS) PTY LTD
	File Number:	DA18/0222

Speaking for the proposal was Paul Kelly and David Rippingill.

Two other members of the applicant's team spoke in favour of the proposal.

PANEL DECISION:

THAT:

Pursuant to the provisions of Section 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, Development Application No. 18/0222 for alterations, additions, fit out and use of a commercial premises as a pub at 34 Railway Crescent, Jannali be approved subject to the Conditions within the Council staff report to the Panel meeting of 17 July 2018, with the following amendments:

- Condition 2A(i) be deleted;
 - A revised Condition 2A(i) be incorporated stating:
The designated 10pm-Midnight external smoking area shall be relocated to the front of the Fire Hydrant/Booster cupboard area at the southern portion of the paved lower level. Appropriate refuse containers are to be provided within this area for the disposal of cigarette butts (and retention of the introductory and concluding sentences to that condition).
 - A new Condition 2A(ii) be included to state:
An amended plan is to be prepared to redesign the canopy over the northern entry and relocate the letterboxes (such as along the northern building wall), - to achieve a continuous landscaped area for screen tree planting on the northern boundary opposite the adjoining residential flat building This requires the proposed building canopy to be revised to provide space for the growth of trees with a deep soil area of at least 1.5m wide from the northern side boundary -“
Reason: Given the location of the outside gaming facility and use of the area between the building and the neighbouring residential flat building to the north there is a need - to provide continuous landscaping adjacent to the northern boundary to provide a vegetated buffer.
 - Condition 11 be deleted;
 - Condition 20D(v) be amended to state the amplified music shall cease at 9pm not 8pm;
 - Condition 22A be amended as requested by the applicant in the document dated 17 July 2018 (excluding the reason within that document).
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- Condition 32(c) be amended to change the words “submission” to “substantiated complaints” and to include a concluding sentence: “Such application may be via Section 4.55 of the Environmental Planning and Assessment Act 1979, and should include a Plan of Management, revised as may be appropriate from operation of the premises during the trial and following consultation with neighbours and the NSW Police Service”.

REASON FOR THE DECISION:

The Panel generally agreed with the assessment of environmental considerations outlined within the Council staff report.

The use is permissible in the zone and the proposal consistent with the objectives of the Local Centre B2 zoning.

The Panel noted the prior existence of a pub at the site prior to its recent redevelopment. The proposal will provide a venue for people to meet and recreate and will provide some positive social and economic benefits. There are benefits in terms of streetscape activation and support for the local Centre of which the site is part. The pub will also provide a wide range of services to the community. Potentially negative social impacts, including amenity impacts, such as acoustic and privacy concerns, impacts from smoke and matters related to behaviour of patrons are able to be effectively regulated and monitored through the recommended conditions of consent (as amended), including a trial period for the proposed earlier and later trade. This is a consistent approach outlined in Council’s DCP and is warranted given the new pub is substantially different to the previous pub, given the evolving nature of the area (including the building of which it is part) and given the views expressed by the NSW Police Service.

In terms of the Police Service, the Panel had regard to their submission, and noted concerns with the Plan of Management, although formed the view that document, the trial period and various conditions provided an appropriate regulatory framework for the proposal (together with provisions under the Liquor Act).

There had been a prior approval for the new building on the site, including an indicative pub use for the tenancy (although that was to be subject to a separate detailed DA, being the subject application).

The Panel spent some time considering the issue of the loss of landscaping compared to the approved DA for the building on the site, particularly in the vicinity of the gaming room and adjoining the northern side boundary. It was understood this related to the placement of a letter box and BCA considerations (as well as limitations imposed by the stormwater easement). However, a revision to the letterbox placement and associated building canopy would provide improved landscaping along the northern boundary, at least close to the width approved in the DA

for the host building. A new condition was imposed accordingly.

In terms of consideration of submissions and community views, it was noted there were 4 objections to the proposal. The Panel noted the matters raised and generally agreed with the Council staff assessment of those matters, although noting changes to the recommended conditions.

In terms of the recommended conditions, the Panel was provided with two documents. The first was from Council staff related to an expanded Condition 2A (requiring relocation of the front smoking area to the south), which was relayed to the applicant at the meeting, with no objection raised. The second was a two page table from the applicant dated 17 July 2017 presented at the meeting. This outlined requested modifications to Conditions 2, 6, 11, 20D(v), 22A, 32 and 34 [sic, should read 37].

Briefly in relation to these matters requested by the applicant, the Panel formed the view that:

- Condition 2A(i) should be deleted as the proposed fencing will more appropriately accommodate climbing planting as proposed;
- Condition 6 should be retained as any works to the Roads reserve related to this proposed requires an approval under the Roads Act and the condition itself did not require a duplicate approval;
- Condition 11 should be deleted as it did not reasonably relate to the proposal;
- Condition 20D(v) should be amended to state the amplified music shall cease at 9pm not 8pm (and noting other noise requirements)
- Condition 22A should be amended as requested by the applicant, although not for the reason stated but because noise criteria under existing and consistently applied Guidelines should be applied, and noting the trial period to gauge impacts;
- Condition 32 (Trial) be retained for reasons outlined previously; and
- Condition 37 should remain as recommended, noting the security personnel matches that recommended by Police, the capacity is relatively large and the matter of security provision is able to be reviewed at the end of the trial period.

Additional conditions and refinements to conditions were imposed, as outlined in the decision.

VOTES

The decision was unanimous.

ASSESSMENT OFFICER'S RECOMMENDATION

THAT:

1. That Development Application No. 18/0222 for Alterations, additions, fit out and use of a commercial premise as a Pub at Lot 1 DP 212353 34 Railway Crescent, Jannali be approved, subject to the conditions contained in Appendix "A" of the report.

The Meeting closed at 9.15pm.